Office-Supreme Court, U.S.
FILED
SEP 15 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 558

REGINALD A. HAWKINS,

Petitioner,

—v.—

STATE OF NORTH CAROLINA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

JACK GREENBERG
MELVYN ZARR
10 Columbus Circle
New York, New York 10019

ANTHONY G. AMSTERDAM
3400 Chestnut Street
Philadelphia, Pa. 19104

J. LEVONNE CHAMBERS
405½ East Trade Street
Charlotte, North Carolina

THOMAS WYCHE
2500 Beatties Ford Road
Charlotte, North Carolina

CHARLES V. BELL
112 South Irwin Avenue
Charlotte, North Carolina

Attorneys for Petitioner

INDEX

	PAGE
Citations to Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement	6
Reasons for Granting the Writ	
I. Certiorari Should Be Granted to Reverse the Court of Appeals' Holding That Federal Removal Jurisdiction May Be Defeated by the State's Choice of Charges	9
II. Certiorari Should Be Granted to Clarify the Scope of This Court's Decision in *City of Greenwood* v. *Peacock*, Which Was Extended by the Court Below So As To Bring It Into Conflict With *Georgia* v. *Rachel*	10
III. Certiorari Should Be Granted to Reconsider *City of Greenwood* v. *Peacock* Insofar as That Case Indicates Disallowance of Federal Civil Rights Removal Jurisdiction of State Criminal Prosecutions Brought Solely to Harass and Intimidate Negroes and to Punish Them for, and Deter Them From, Exercising Their Right to Vote	13
Conclusion	19

PAGE

APPENDIX I

Opinion of United States Court of Appeals for the Fourth Circuit 1a

Judgment of United States Court of Appeals for the Fourth Circuit 9a

APPENDIX II

Opinion of United States District Court for the Western District of North Carolina 10a

Judgment of United States District Court for the Western District of North Carolina 14a

TABLE OF CASES

City of Greenwood v. Peacock, 384 U. S. 808 (1966) 8, 10, 11, 12, 13, 14, 15, 18

Georgia v. Rachel, 384 U. S. 780 (1966) 9, 10, 11, 12, 13, 15, 16

Harper v. Virginia Board of Elections, 383 U. S. 663 (1966) 15

Hawkins v. North Carolina Dental Society, 355 F. 2d 718 (4th Cir. 1966) 6

Hawkins v. North Carolina State Board of Education, W. D. N. C., No. 2067 6

Kentucky v. Powers, 201 U. S. 1 (1906) 9

Reynolds v. Sims, 377 U. S. 533 (1964) 14

United States v. Clark, 249 F. Supp. 720 (S. D. Ala. 1965) 16

PAGE

United States v. Raines, 362 U. S. 17 (1960) 15
United States v. Wood, 295 F. 2d 772 (5th Cir. 1961), cert. den. 369 U. S. 850 (1962) 16, 17

Walker v. Georgia, 381 U. S. 355 (1965) 10
Wilson v. Republic Iron & Steel Co., 257 U. S. 92 (1921) 9

Yick Wo v. Hopkins, 118 U. S. 356 (1886) 14

FEDERAL STATUTES

R. S. §2004 (1875) 3
Act of September 9, 1957, Pub. L. 85-315, §131, 71 Stat. 637 ..... 11, 14, 16
Act of May 6, 1960, Pub. L. 86-449, 74 Stat. 90 14
Act of July 2, 1964, Pub. L. 88-352, §201(a), 78 Stat. 243 ..... 10, 14
Act of July 2, 1964, Pub. L. 88-352, §203, 78 Stat. 244 ..... 10, 14, 17
Act of August 6, 1965, Pub. L. 89-110, §11(b), 79 Stat. 443 ..... 11, 14, 17
28 U. S. C. §1254(1) (1964) 2
28 U. S. C. §1443(1) (1964) 2, 3, 11, 13
42 U. S. C. §1971(a)(1) (1964) 2, 3, 11
42 U. S. C. §1971(b) (1964) 2, 3, 11, 12, 16, 17
42 U. S. C. §1973i(b) (Supp. I, 1965) 2, 3, 4, 11, 12
42 U. S. C. §2000a(a) (1964) 4, 10, 11
42 U. S. C. §2000a-2 (1964) 5, 10, 11, 12

STATE STATUTES

N. C. Gen. Stat. §163-196(3) 6
N. C. Gen. Stat. §163-197(1) 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. .....

REGINALD A. HAWKINS,

Petitioner,

—v.—

STATE OF NORTH CAROLINA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in this case on August 16, 1966.

Citations to Opinions Below

The *per curiam* opinion and judgment of the Court of Appeals and Judge Sobeloff's special concurrence are as yet unreported and are set forth in Appendix I, hereto, pp. 1a-9a, *infra.*

The remand order and supporting opinion of the United States District Court for the Western District of North Carolina, entered May 15, 1965 and affirmed by the Court of Appeals, are as yet unreported and are set forth in Appendix II, hereto, pp. 10a-14a, *infra.*

Jurisdiction

The judgment of the Court of Appeals was entered August 16, 1966 (Appendix I, p. 9a). Jurisdiction of this Court is invoked pursuant to 28 U. S. C. §1254(1) (1964).

Questions Presented

1. Did the Court of Appeals err in accepting, without an evidentiary hearing below, the charges against petitioner rather than the allegations of his petition for removal as the basis for testing petitioner's claim to civil rights removal jurisdiction over his state criminal prosecution?

2. Did the Court of Appeals err in disallowing federal civil rights removal jurisdiction of petitioner's state criminal prosecution where that prosecution was brought (a) on account of acts directly involved in the process of Negro voting registration, and (b) solely to harass petitioner and to punish him and other Negroes for, and deter them from, registering to vote?

Statutes Involved

A. This case involves the construction of 28 U. S. C. §1443(1) (1964) as it pertains to the protection afforded rights conferred by 42 U. S. C. §§1971(a)(1), (b) (1964), 1973i(b) (Supp. I, 1965), the latter section being Sec. 11(b) of the Voting Rights Act of 1965, 79 Stat. 443.

In relevant part, these statutes provide:

1. 28 U. S. C. §1443(1) (1964):

§1443. Civil rights cases

Any of the following civil actions or criminal prosecutions, commenced in a State Court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof; . . .

2. 42 U. S. C. §1971(a)(1) (1964) (R. S. §2004 (1875):

§1971 . . .

(a) (1) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

3. 42 U. S. C. §1971(b) (1964) (Sec. 131 of the Civil Rights Act of 1957, 71 Stat. 637):

§1971 . . . (b) Intimidation, threats, or coercion

No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or at-

tempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

4. 42 U. S. C. §1973 i (b) (Supp. I, 1965) (Sec. 11(b) of the Voting Rights Act of 1965, 79 Stat. 443):

§1973 i . . . (b) Intimidation, threats, or coercion

No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 1973a(a), 1973d, 1973f, 1973g, 1973h, or 1973j(e) of this title.

B. In this petition, important reference will also be made to the following statutes:

1. 42 U. S. C. §2000a (a) (1964) (Sec. 201(a) of the Civil Rights Act of 1964, 78 Stat. 243):

§2000a. Prohibition against discrimination or segregation in places of public accommodation—Equal access

(a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

2. 42 U. S. C. §2000a-2 (1964) (Sec. 203 of the Civil Rights Act of 1964, 78 Stat. 244):

§2000a-2. Prohibition against deprivation of, interference with, and punishment for exercising rights and privileges secured by section 2000a or 2000a-1 of this title

No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 2000a or 2000a-1 of this title, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 2000a or 2000a-1 of this title, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 2000a or 2000a-1 of this title.

Statement

November 12, 1964, petitioner Reginald A. Hawkins, a Negro dentist active in civil rights work,[1] filed in the United States District Court for the Western District of North Carolina a petition for removal of a criminal prosecution from the Superior Court of Mecklenburg County, North Carolina (R.I., 20a-25a).[2] The criminal proceedings against petitioner involved charges of interfering with a special registration commissioner in the performance of her duties, an alleged violation of N. C. Gen. Stat. §163-196(3), and of fraudulently procuring the registration of certain persons not qualified to vote under North Carolina law, an alleged violation of N. C. Gen. Stat. §163-197(1) (R.I., 23a).

Petitioner's removal petition invoked 28 U. S. C. §1443 (1964), the civil rights removal statute. It alleged that the prosecution against him was maintained for the sole purpose and effect of harassing him and punishing him for, and deterring him and other Negroes from, exercising their right to vote (R.I., 25a), and that the conduct with which he was charged was protected by the First, Fourteenth and Fifteenth Amendments and by federal civil rights statutes, including 42 U. S. C. §1971 (R.I., 24a-25a).[3]

---

[1] See, e.g., *Hawkins* v. *North Carolina Dental Society*, 355 F. 2d 718 (4th Cir. 1966); *Hawkins* v. *North Carolina State Board of Education*, W. D. N. C., No. 2067 (decided April 4, 1966; three-judge court).

[2] An amended petition was filed on April 26, 1965 (R. I., 26a).

[3] Petitioner had earlier moved the Superior Court of Mecklenburg County to quash the indictments against him on the grounds, *inter alia*, that the statutes upon which the indictments were based were unconstitutionally vague and thus repugnant to the due

Specifically, it alleged that on the night of April 8, 1964, in his capacity as president of the Mecklenburg Organization on Political Affairs, a civic affairs association, petitioner engaged in a voter registration project to encourage Negroes in the community to register and vote in the forthcoming federal and state elections (R.I., 20a). Petitioner visited the homes of prospective voters, determined whether they could read and write and were otherwise eligible for registration; encouraged those persons who were qualified to register to do so; and assisted them by providing transportation to the local high school which was used as a place of registration (R.I., 20a-21a). Upon petitioner's arrival at the place of registration, there were many applicants waiting to be registered (R.I., 21a). The special registration commissioner, assertedly unfamiliar with the registration procedure, requested petitioner to assist her in registering the prospective Negro voters (R.I., 21a). Petitioner suggested, *inter alia*, that the oath be administered collectively rather than individually; the registration commissioner accepted this suggestion, administered the oath and attested to the qualifications of the applicants (R.I., 20a-21a). These activities led to the indictments against petitioner (R.I., 21a-23a).

On April 26, 1965, the State filed a motion to remand, challenging the sufficiency of the petition to invoke fed-

---

process clause of the Fourteenth Amendment; that the indictments were based upon alleged violations of statutes which, on their face and as applied to his conduct, infringed federal statutory and constitutional voting rights and the North Carolina Constitution; and that application of the literacy test referred to in the indictments was forbidden by 42 U. S. C. §1971 (1964), depriving petitioner of his rights under that statute (R.I., 7a-11a). This motion was denied (R.I., 12a-19a). After removal of the case, petitioner filed in the District Court a motion to dismiss based on substantially identical grounds (R.I., 27a-29a).

eral removal jurisdiction under 28 U. S. C. §1443 (1964) (R.I., 30a-31a).

The district court held no evidentiary hearing, but heard oral argument on the question of the sufficiency in law of the removal petition. On May 15, 1965, the district court remanded the case and a timely appeal was taken (R.I., 32a-37a).

On August 16, 1966, the United States Court of Appeals for the Fourth Circuit, in a *per curiam* opinion by Judges Haynsworth and Bryan, affirmed the district court's remand order. Two grounds for affirmance were cited (Appendix I, p. 2a):

1. The specific charges of the indictment contradicted the allegations of the removal petition.

2. This Court, in *City of Greenwood* v. *Peacock,* 384 U. S. 808 (1966), had disallowed removal to federal court of a state criminal prosecution brought to harass the removal petitioner and to punish him and other Negroes for, and deter them from, registering to vote.

As to the first ground of decision, Judge Sobeloff dissented (Appendix I, pp. 5a, 8a). As to the second ground of decision, Judge Sobeloff concurred, stating that *City of Greenwood* v. *Peacock,* 384 U. S. 808 (1966), precluded him from holding that voting harassment prosecutions were removable to federal court (Appendix I, pp. 3a-8a).

REASONS FOR GRANTING THE WRIT

I.

Certiorari Should Be Granted to Reverse the Court of Appeals' Holding That Federal Removal Jurisdiction May Be Defeated by the State's Choice of Charges.

The majority of the Court of Appeals apparently took the view that civil rights removal should be disallowed whenever the factual allegations in a petition for removal are contradicted by the criminal charges against the petitioner. No reasoning or authority was assigned for this proposition, which *sub silentio* overturns accepted practice in the federal courts.[4] Judge Sobeloff disagreed, saying: "The test of removability is the content of the petition, not the characterization given the conduct in question by the prosecutor" (Appendix I, p. 8a).

The majority's test threatens the right to removal given by *Georgia* v. *Rachel,* 384 U. S. 780 (1966). This Court, in *Rachel,* did not suggest that removal of state prosecutions for acts protected by Title II of the Civil Rights Act of 1964 was limited to *trespass* prosecutions. So to limit *Rachel* would invite the State to defeat removal merely by charging persons sitting-in at protected public accommodations with, for example, breach of the peace instead

---

[4] It is well settled that, in dealing with removal petitions, whether in civil rights cases or others, the factual allegations of the petition, absent an evidentiary hearing, are to be taken as true. *Kentucky* v. *Powers,* 201 U. S. 1, 33-35 (1906); *Wilson* v. *Republic Iron & Steel Co.,* 257 U. S. 92, 97-98 (1921).

of trespass.[5] The present decision by a majority of the Fourth Circuit constitutes such an invitation. To preserve even the narrow right of removal allowed by *Rachel*, it is vital that this Court grant certiorari to review this wholly frustrating innovation in removal procedure.[6]

II.

Certiorari Should Be Granted to Clarify the Scope of This Court's Decision in *City of Greenwood* v. *Peacock*, Which Was Extended by the Court Below So As To Bring It Into Conflict With *Georgia* v. *Rachel*.

Section 201(a) of the Civil Rights Act of 1964, 78 Stat. 243, 42 U. S. C. §2000a(a) (1964), pp. 4-5 *supra*, gives all persons a right of service without racial discrimination in places of public accommodation. Section 203 of the Act, 78 Stat. 244, 42 U. S. C. §2000a-2 (1964), p. 5, *supra*, assures the practical realization of that right by providing that no person shall "intimidate, threaten or coerce, or attempt to intimidate, threaten, or coerce" or "punish or attempt to punish" another in the exercise of the substantive rights given by section 2000a(a). Similarly, R. S.

---

[5] The danger posed by such an invitation is not merely speculative. The State of Georgia is now charging persons who sought to enjoy non-discriminatory treatment in the place of public accommodation involved in *Rachel* with crimes *other* than trespass. For example, those persons whose trespass convictions were reversed by this Court in *Walker* v. *Georgia*, 381 U. S. 355 (1965), are now being prosecuted for the same activities for crimes other than trespass. These prosecutions have been removed to the United States District Court for the Northern District of Georgia, Cr. Nos. 24701 and 24705.

[6] Because the Fourth Circuit is one of the two federal circuits comprising the substantial bulk of the southern States, the present decision represents a critical obstruction of the right given in *Rachel*, even if it is not persuasive to the other courts of appeals.

§2004 (1875), 42 U. S. C. §1971(a)(1) (1964), p. 3, *supra*, gives all persons a right to register and vote without racial discrimination. Section 131 of the Civil Rights Act of 1957, 71 Stat. 637, 42 U. S. C. §1971(b) (1964), pp. 3-4, *supra*, assures the practical realization of the latter right by providing that no person shall "intimidate, threaten, or coerce, or attempt to intimidate, threaten or coerce" another in the exercise of voting rights. And section 11(b) of the Voting Rights Act of 1965, 79 Stat. 443, 42 U. S. C. §1973i(b) (Supp. I, 1965), p. 4, *supra*, further assures protection of the voting right by providing that no person shall "intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote or . . . for urging or aiding any person to vote or attempt to vote."

In *Georgia* v. *Rachel, supra,* this Court sustained removal under 28 U. S. C. §1443(1) (1964) of state criminal trespass prosecutions brought against Negroes for refusing to leave places of public accommodation in which they were given a right of service without racial discrimination by §2000a. §2000a(a) was read as giving persons seeking restaurant service a right to insist upon such service without discrimination, and §2000a-2 was read as giving a concomitant right not to be prosecuted for that insistence.

In *City of Greenwood* v. *Peacock, supra,* this Court disallowed removal of prosecutions against civil rights demonstrators based upon their conduct in protesting the denial to Negroes of rights to register and vote given by §1971(a)(1). Section 1971(a)(1) was read as *not* extending to persons a right to *protest* racial discrimination in voting registration, as distinguished from a right to register, or to

assist others in registering, to vote without racial discrimination. Thus, §§1971(b) and 1973i(b), which protect those persons directly engaging in the exercise of voting rights in the same way that §2000a-2 protects sit-ins, that is, against the coercive, intimidating and punishing effects of state prosecution for protected activity, were not called into play.

The only other possible distinction between *Rachel* and *Peacock*—namely, that §2000a-2 includes the word "punish" together with "intimidate, threaten or coerce" within its prohibition, while §§1971(b) and 1973i(b) do not—is so palpably insubstantial as to trivialize the significance of these important pieces of federal civil rights legislation. Yet, only this second and wholly impermissible distinction will support the decision below affirming remand of petitioner's case. For Dr. Hawkins, unlike the demonstrators in *Peacock,* was directly engaged in the process of registering prospective Negro voters, and the conduct for which he is prosecuted comes flush within the language of §1973i(b): "aiding any person to vote or attempt to vote." His is clearly conduct for which one of the "specific provisions of a federal pre-emptive civil rights law"—§1973i(b)—"confers immunity from state prosecution." *Peacock, supra,* at 826, 827. The decision of the Court of Appeals extending *Peacock* to deny removal in his case, therefore, calls imperatively for review by this Court if *Rachel* is not to be reduced to trifling and rationally unsupportable dimensions.

III.

Certiorari Should Be Granted to Reconsider *City of Greenwood* v. *Peacock* Insofar as That Case Indicates Disallowance of Federal Civil Rights Removal Jurisdiction of State Criminal Prosecutions Brought Solely to Harass and Intimidate Negroes and to Punish Them for, and Deter Them From, Exercising Their Right to Vote.

In authorizing removal to a federal court, under 28 U. S. C. §1443(1) (1964), of state criminal charges for conduct immunized from prosecution by federal laws providing for equal civil rights, this Court in *Georgia* v. *Rachel, supra,* recognized the practical effect of such charges. The mere pendency of state prosecutions, without more, was properly seen to defeat the meaningful exercise of federally protected rights because, regardless of their outcome, these prosecutions serve to punish the defendants for, and intimidate and deter them from, exercising their federal rights. Therefore, a removal petitioner was held to be "denied" his federal rights by prosecution in the state court system whenever a federal law providing for equal civil rights immunized his conduct from prosecution.

This Court said (384 U. S. at 805):

> It is no answer in these circumstances that the defendants might eventually prevail in the state court. The burden of having to defend the prosecutions is itself the denial of a right explicitly conferred by the Civil Rights Act of 1964 as construed in *Hamm* v. *City of Rock Hill* [379 U. S. 306].

The federal law successfully relied upon by the removal petitioners in *Rachel* was Title II of the Civil Rights Act

of 1964, pp. 4-5, *supra,* protecting the right of equal access to places of public accommodation. Unless Congress has determined that voting rights are less worthy or needful of federal protection than the right to equal public accommodations, or unless it has failed to protect the former rights by similarly "specific provisions of a federal preemptive civil rights law," *City of Greenwood* v. *Peacock, supra,* 384 U. S. at 826, then state prosecutions brought solely to harass and intimidate Negroes and to punish them for, and deter them from, exercising their right to vote should likewise be removable to federal court.

Neither Congress nor this Court has relegated voting rights to such a subordinate position. In the Civil Rights Acts of 1957,[7] 1960,[8] 1964,[9] and 1965,[10] Congress has enacted a comprehensive scheme for the protection of voting rights, a legislative scheme certainly no less protective than Title II of the Civil Rights Act of 1964. Analysis of this scheme renders it "difficult to conceive that Congress intended to place voting rights guarantees on a lower plane of protection than the right to equal public accommodations" (Opinion of Judge Sobeloff below, Appendix I, p. 8a). And this Court has long recognized that the right to vote is a fundamental right, "because preservative of all rights" (*Yick Wo* v. *Hopkins,* 118 U. S. 356, 370 (1886)). In *Reynolds* v. *Sims,* 377 U. S. 533, 561-62 (1964), the Court said: "Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unim-

[7] Act of September 9, 1957, Pub. L. 85-315, 71 Stat. 637.

[8] Act of May 6, 1960, Pub. L. 86-449, 74 Stat. 90.

[9] Act of July 2, 1964, Pub. L. 88-352, 78 Stat. 241.

[10] Act of August 6, 1965, Pub. L. 89-110, 79 Stat. 437.

paired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." [11]

If *City of Greenwood* v. *Peacock, supra,* has disallowed federal civil rights removal jurisdiction as a protection of federal voting rights, it has disallowed too much. In Part II, *supra,* of its petition for certiorari, petitioner has described the two possible grounds of distinction between *Peacock* and *Rachel.* One, turning on the adventitious insertion of the word "punish" in Title II of the Civil Rights Act of 1964, is plainly less plausible than the other. But both are equally neglectful of profound and pervasive federal constitutional and statutory commitments to effective protection of the American citizen's right to the franchise without racial discrimination.

Peacock was a victim of diffuse presentation in this Court. Confronted by a welter of factual situations and by a statute having an obscure text, a muddy history, a broad range of alternative plausible readings and no authoritative construction by this Court for 60 years, presentation was necessarily dispersed and unfocused. The result was an opinion by the Court which cut too broadly, ignoring the special position of federal voting rights in our federal system and the exhaustive scheme of congressional legislation designed to protect those rights.

With all deference, it is submitted the language and intent of federal voting legislation[12] plainly enable petitioner

---

[11] See also, *Harper* v. *Virginia Board of Elections,* 383 U. S. 663, 667-68 (1966); *United States* v. *Raines,* 362 U. S. 17, 27 (1960).

[12] The Voting Rights Act of 1965 was not enacted until petitioner's case was on appeal. However, in order to promote effi-

and others subjected to prosecutions which repress Negro voting registration activity to meet the test of removal announced in *Georgia* v. *Rachel, supra.* Title 42 U. S. C. §1971(b) (1964),[13] pp. 3-4, *supra,* provides an ample declaration of congressional intention to immunize from state prosecution a person against whom state criminal charges are brought with the sole purpose and effect of harassing and intimidating him and other Negroes and punishing them for, and deterring them from, exercising their right to vote. The United States Court of Appeals for the Fifth Circuit has so held, and its reasoning and authority are persuasive. *United States* v. *Wood,* 295 F. 2d 772 (5th Cir. 1961), cert. den. 369 U. S. 850 (1962).

In *Wood,* the Fifth Circuit ordered a federal injunction against the state prosecution of John Hardy, a Negro voter registration worker in Walthall County, Mississippi, for peacefully attempting to encourage Negro citizens to attempt to register to vote. Hardy had been arrested, without cause, for breach of the peace. The court held that the prosecution of Hardy, regardless of its outcome, would effectively intimidate Negroes in the exercise of their right to vote in violation of 42 U. S. C. §1971(b) (1964).[14]

As a matter of language, 42 U. S. C. §1971(b) (1964), is broad enough to cover the case of official intimidation

---

ciency of judicial administration, its impact upon petitioner's case should be evaluated here, since not to do so would compel petitioner to file a second petition for removal, were removal under the other voting rights acts disallowed. See *Georgia* v. *Rachel, supra.*

[13] Enacted in the Civil Rights Act of 1957, §131, 71 Stat. 637.

[14] *Wood* was followed in *United States* v. *Clark,* 249 F. Supp. 720 (S. D. Ala. 1965) (three-judge court).

through abuse of the state criminal process. "If, as alleged in the removal petition, prosecution against persons assisting in a Negro voter registration drive is racially motivated, this is an 'attempt to intimidate, threaten, or coerce' Negroes in the exercise of their right to vote" (Opinion of Judge Sobeloff, Appendix I, p. 6a). Moreover, the legislative history of 42 U. S. C. §1971(b) (1964), canvassed in *Wood,* 295 F. 2d at 781-82, compels the conclusion "that Congress contemplated just such activity as is here alleged —where the state criminal processes are used as instruments for the deprivation of constitutional rights" (295 F. 2d 781).

Sec. 11(b) of the Voting Rights Act of 1965, p. 4, *supra,* is of particular significance here for two reasons. First, it has signified congressional acceptance of the *Wood* construction of §1971(b) in that it specifically proscribes any "attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote." This should set to rest whatever doubt §1971(b) may have left that petitioner, himself previously registered to vote, merits the protection of federal voting legislation in aiding others to do so. Second, it has retained the "intimidate, threaten or coerce" formula of §1971(b), apparently deeming it sufficient to cover the case of official intimidation through harassment prosecutions—a case undoubtedly recognized by the 89th Congress as an important means of repression of persons aiding other persons to register to vote. Thus it can be seen that there is no magic to the language "punish or attempt to punish" of Sec. 203(c) of the Civil Rights Act of 1964 which qualifies it alone to combat harassment prosecutions violative of important federal rights.

The need for a protective removal jurisdiction over voting intimidation cases has been sufficiently stated by Judge Sobeloff (Appendix I, p. 6a):

> If Georgia is forbidden to prosecute sit-ins under the public accommodations provisions of the 1964 Act, North Carolina would likewise seem to be forbidden to prosecute Dr. Hawkins for assisting in the exercise of [voting] rights.
>
> • • • • •
>
> It is immaterial that Dr. Hawkins himself was not seeking to register; it is enough that he was assisting other Negroes to do so. If the law's protection cannot be invoked by the more intelligent and better-educated Negro who furnishes leadership and guidance to others of his race, the purpose of the Voting Rights Act will be severely impaired.
>
> Negroes' rights are as effectively frustrated by prosecutions arising out of the attempt to exercise voting rights as by prosecutions growing out of the assertion of the right to equal accommodations. The use of the criminal process for the purposes of intimidation, I submit, would logically be proscribed in both cases.

Permitting appellant to prove in a federal evidentiary hearing that the state prosecution against him is nothing more than an attempt to stifle the exercise of the right to vote by Negroes in Mecklenburg County, North Carolina will not "work a wholesale dislocation of the historic relationship between the state and federal courts in the administration of the criminal law" (*Peacock, supra,* 384 U. S. at 831). Rather, it will vindicate respect for that law.

CONCLUSION

The writ of certiorari should be granted to review and reverse the judgment of the Court of Appeals.

Respectfully submitted,

JACK GREENBERG
MELVYN ZARR
10 Columbus Circle
New York, New York 10019

ANTHONY G. AMSTERDAM
3400 Chestnut Street
Philadelphia, Pa. 19104

J. LEVONNE CHAMBERS
405½ East Trade Street
Charlotte, North Carolina

THOMAS WYCHE
2500 Beatties Ford Road
Charlotte, North Carolina

CHARLES V. BELL
112 South Irwin Avenue
Charlotte, North Carolina

Attorneys for Petitioner

APPENDIX I

Opinion of United States Court of Appeals for the Fourth Circuit

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 10,062

STATE OF NORTH CAROLINA,

Appellee,

versus

REGINALD A. HAWKINS,

Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA, AT CHARLOTTE

J. BRAXTON CRAVEN, JR., DISTRICT JUDGE

(Argued April 7, 1966 Decided August 16, 1966.)

Before:

HAYNSWORTH, *Chief Judge,* and
SOBELOFF and BRYAN, *Circuit Judges.*

PER CURIAM:

Dr. Hawkins, a dentist, was indicted by a state grand jury charged with unlawful interference with a voting registration commissioner in the discharge of her duties and with the unlawful procurement of the registration of four un-

qualified voters. He undertook to remove the prosecution to the District Court. We affirm the order of remand.

In the removal petition, it is alleged that he merely rendered requested assistance to the commissioner, that he made no representations about the qualifications of any voter, that the state's purpose was to harass and deter him, and, in conclusionary language, that he could not obtain a fair trial in North Carolina's courts. His allegations as to what transpired on the particular occasion are in contradiction of the specific charges of the indictment.

It is clear that this is not a case removable under 28 U. S. C. A. § 1443. Compare City of Greenwood v. Peacock, 384 U. S. 808, with State of Georgia v. Rachel, 384 U. S. 780; See Baines v. City of Danville, 384 U. S. 890; affirming Baines v. City of Danville, 4 Cir., 357 F. 2d 756; and Wallace v. Virginia, 384 U. S. 891, affirming Commonwealth of Virginia v. Wallace, 4 Cir., 357 F. 2d 105.

Affirmed.

SOBELOFF, *Circuit Judge,* concurring specially:

Appellant, Dr. Reginald A. Hawkins, is a Negro dentist practicing in Charlotte, North Carolina, who has engaged in civil rights activities. *E.g.,* see *Hawkins* v. *North Carolina Dental Society,* 355 F. 2d 718 (4th Cir. 1966). On September 7, 1964, he was indicted by the Grand Jury of Mecklenburg County, North Carolina, on charges of unlawfully interfering with a special voting registration commissioner, North Carolina General Statutes § 163-196(3), and unlawfully and fraudulently procuring the registration of certain persons not qualified to vote under North Carolina law, in violation of § 163-197(h) of the statute. The prosecutions were removed to the District Court for the

Western District of North Carolina, pursuant to 28 U. S. C. A. §§ 1443 *et seq.*, but that court remanded to the state court, and this appeal followed.

The removal petition recites *inter alia*, that on the night of April 8, 1964, in his capacity as president of the Mecklenburg Organization on Political Affairs, Dr. Hawkins was engaged in a voters' registration campaign to encourage Negroes in the community to register and vote in the forthcoming federal and state elections. Petitioner, and presumably others participating in the drive, visited the homes of prospective voters, determined whether they could read and write and were otherwise eligible for registration, encouraged qualified persons to register, and assisted them by providing transportation to the local high school which was used as a place of registration.

On petitioner's arrival at the place of registration, there were a large number of applicants waiting to be registered. The special registration commissioner, due to her asserted unfamiliarity with the procedure, requested Dr. Hawkins to assist in registering the prospective Negro voters. Dr. Hawkins suggested, among other things, that the oath be administered en masse rather than individually, and then the registration commissioner herself attested to the qualifications of the applicants and signed their applications. The indictments mentioned above allegedly grew out of these activities.

In *Rachel* v. *Georgia*, —— U. S. ——, 34 U. S. L. Week 4563 (1966), the Supreme Court authorized removal to the federal court of prosecutions against Negro defendants charged under a local trespass statute with failing to obey an order to leave a restaurant. Adhering generally to the interpretation of removal enunciated in the *Rives-Powers*

line of decisions,[1] the Court nevertheless held that removal was in order if a basis could be shown for a "firm prediction that the defendant would be 'denied or cannot enforce' the specified federal rights in the state court." *Id.* at ——; 34 U. S. L. Week at 4570. That basis was found in the public accommodations section of the Civil Rights Act of 1964, which grants all persons, regardless of their race, a right to be served in places of public accommodation, and further prohibits the state from punishing or attempting to punish any person for exercising those rights. Civil Rights Act of 1964, § 203(c). 42 U. S. C. A. § 2000a-2 (1964). The Court went on to hold that:

> "Hence, if as alleged in the present removal petition, the defendants were asked to leave solely for racial reasons, then the mere pendency of the prosecutions enables the federal court to make the clear prediction that the defendants will be 'denied or cannot enforce in the courts of [the] state' the right to be free of any 'attempt to punish' them for protected activity." *Ibid.* at p. ——.

Since the removal petition in *Rachel* had been remanded by the District Court to the state court without a hearing, the Supreme Court ordered the District Court to conduct a hearing to determine the truth of the petitioners' allegations that they had been ordered to leave the restaurant solely for racial reasons. If that should be the finding of the District Court, said the Supreme Court, then "it will be apparent that the conduct of the defendants is 'im-

---

[1] See Kentucky v. Powers, 201 U. S. 1 (1906); Rives v. Virginia, 100 U. S. 303 (1879); Strauder v. West Virginia, 100 U. S. 313 (1879); Rachel v. Georgia, *supra* at ——, 34 U. S. L. Week at 4565, n. 5.

munized from prosecution' in any court," and the removal petition should be allowed. *Id.* at ——; 34 U. S. L. Week at 4571.

Rachel cannot fairly be construed to mean that removal may be had only where the facts precisely duplicate those presented there, *i.e.*: where a Negro is indicted under a state criminal statute for refusing to leave the premises of a place of public accommodation. The essence of the *Rachel* decision is that the federal court is empowered to determine the narrow question whether the activities giving rise to a charge in the state courts constitute conduct protected by a federal statute that provides for equal civil rights and prohibits the state from prosecuting persons engaged in that conduct.

The court's opinion in the present case states that Dr. Hawkins' "allegations as to what transpired on the particular occasion are in contradiction of the specific charges of the indictment," and suggests that this is the ground for rejecting removal. The Supreme Court's opinion in *Rachel* makes clear, however, that conflict between the allegations in the removal petition and the criminal indictment is not ground for denying removal, provided that (1) the petition alleges facts which, if true, establish that the conduct is protected under a federal statute guaranteeing equal civil rights, and (2) there is a federal statutory prohibition against prosecution in the state courts for such conduct. Establishment of both propositions will impel the conclusion that the petitioner "is denied or cannot enforce" his rights in the state court, justifying removal.

Here, as in the *Rachel* sit-in cases, Dr. Hawkins was engaged in assisting Negroes in the exercise of equal civil rights guaranteed by a federal statute, namely the Voting Rights Act of 1964. Section 1971(b) of that statute, orig-

inally a part of the Civil Rights Act of 1957, specifically provides that:

> "*No person,* whether *acting under color of law* or otherwise, *shall* intimidate, threaten, coerce, *or attempt to intimidate, threaten or coerce* any other person for the purpose of interfering with the right of such other person to vote * * *." 42 U. S. C. A. § 1971(b) (1964). (Emphasis added.)

If, as alleged in the removal petition, prosecution against persons assisting in a Negro voter registration drive is racially motivated, this is an "attempt to intimidate, threaten or coerce" Negroes in the exercise of their right to vote. If Georgia is forbidden to prosecute sit-ins under the public accommodations provisions of the 1964 Act,[2] North Carolina would likewise seem to be forbidden to prosecute Dr. Hawkins for assisting in the exercise of rights under the voting provisions of the same act.[3] Section 203(c) of the public accommodations portion of the Civil Rights Act of 1964[4]—the basis for permitting removal in *Rachel*—provides that "No person shall * * * (c) *punish or attempt to punish* any person for exercising or attempt-

---

[2] Hamm v. City of Rock Hill, 379 U. S. 306 (1965).

[3] It is immaterial that Dr. Hawkins himself was not seeking to register; it is enough that he was assisting other Negroes to do so. If the law's protection cannot be invoked by the more intelligent and better-educated Negro who furnishes leadership and guidance to others of his race, the purpose of the Voting Rights Act will be severely impaired.

Negroes' rights are as effectively frustrated by prosecutions arising out of the attempt to exercise voting rights as by prosecutions growing out of the assertion of the right to equal accommodations. The use of the criminal process for the purposes of intimidation, I submit, would logically be proscribed in both cases.

[4] 42 U. S. C. A. § 2000a-2 (1964).

ing to exercise any right or privilege secured by section 201 or 202 [equal access to public accommodations]."[5] (Emphasis added.) Section 1971(b) of the voting rights provisions employs a more general prohibition against *any* attempted intimidation, threats, or coercion by persons "acting under color of law or otherwise."[6] Literal comparison of the two provisions suggests that § 1971(b) is a more, not less, sweeping prohibition of official acts of harassment against equal civil rights than the limited proscription of § 203(c), since "attempts to punish" are only one means of coercing, threatening, or intimidating.[7]

---

[5] Section 201 provides in its entirety:

"No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 201 or 202, or

(b) intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 201 or 202, or

(c) *punish or attempt to punish* any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202." 42 U. S. C. A. § 2000a-2 (1964).

[6] "No person, *whether acting under color of law or otherwise,* shall intimidate, threaten, coerce, or attempt to intimidate, threaten or coerce any other person for the purpose of interfering with the right of such other person to vote * * *." 42 U. S. C. A. § 1971(b) (1964). (Emphasis added.)

[7] Section 203(*b*) prohibits acts of intimidation, threats, and coercion, but does not contain the key words "acting under color of authority of law" which are found in the comparable provision of § 1971. § 203(*c*) cures this omission by specifying that no one shall "punish or attempt to punish" any person for exercising or attempting to exercise his rights. Having eliminated acts of state officials from part (b) of § 203, they are thus in effect restored by paragraph (c).

In other words, § 1971(b) of the voting rights provisions seems to express in different language the principle contained in § 203(c) of the public accommodations clauses—that the states, acting through state officials are forbidden to employ any form of attempted intimidation, coercion, or threats, including "attempts to punish." Thus, § 1971(b) performs the same function as § 203(c),

However, in *Peacock* v. *City of Greenwood*, —— U. S. ——, 34 U. S. L. Week 4572 (1966), where the voting rights provisions of § 1971 were invoked in support of a removal claim, the Supreme Court held that "no federal law confers immunity from state prosecution[s]" growing out of attempts to secure the right to vote. Since § 1971 did not contain the specific prohibition against state action that "punish[es] or attempts to punish" present in *Rachel* the Court distinguished voting rights cases from public accommodations cases, and refused to permit removal. Under this interpretation of § 1971(b), which is binding upon me, I agree that the present case must be held not entitled to removal.

On that ground I concur in today's per curiam opinion, and not on the ground therein stated, that the allegations of the petitioner are "in contradiction of the specific charges of the indictment." The test of removability is the content of the petition, not the characterization given the conduct in question by the prosecutor.

---

and suggests that the two clauses should be given the same effect. In this view the Supreme Court's interpretation of § 203(c) in Hamm v. City of Rock Hill, *supra*, 379 U. S. 306 (1965), would apply with equal force to the prohibitions of § 1971(b). It is difficult to conceive that Congress intended to place voting rights guarantees on a lower plane of protection than the right to equal public accommodations.

Judgment of United States Court of Appeals for the Fourth Circuit

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 10,062

STATE OF NORTH CAROLINA,

Appellee,

vs.

REGINALD A. HAWKINS,

Appellant.

APPEAL FROM the United States District Court for the Western District of North Carolina.

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of North Carolina, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed with costs.

CLEMENT F. HAYNSWORTH JR.
Chief Judge, Fourth Circuit

APPENDIX II

Opinion of United States District Court for the Western District of North Carolina

At its September-October term, 1964, the Grand Jury of Mecklenburg County returned indictments against Dr. Reginald A. Hawkins charging, without reference to any particular statute, violations of the election laws of North Carolina. On November 12, 1964, Dr. Hawkins removed these cases (in this court given the single number 1943) from the Superior Court of Mecklenburg County to this court pursuant to 28 U. S. C. A. Sections 1443 and 1446. The cases were set for trial before the undersigned district judge and a jury for April 26, 1965. On that day, and for the first time, the Solicitor for the State moved the court to remand the cases to the Superior Court of Mecklenburg County, questioning federal jurisdiction. The trial of the cases was thereupon postponed and the question of jurisdiction was set down for argument and heard on May 12, 1965.

The court has been helped tremendously by an excellent historical brief filed by counsel for Dr. Hawkins.

It is conceded that there is no federal jurisdiction to try these criminal cases arising upon indictments in the state court unless it be under 28 U. S. C. A. Section 1443, which reads as follows:

"Section 1443. *Civil rights cases*

"Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United

States for the district and division embracing the place wherein it is pending:

"(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

"(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law."

Since *Virginia* v. *Rives,* 100 U. S. 313 (1880), and *Kentucky* v. *Powers,* 201 U. S. 1 (1906), it has been well settled that removal under present Section 1443(1) was allowable only on a claim of *facial* unconstitutionality of a statute or constitutional provision. In *Rives* the Court said that the inability to enforce federal rights of which the removal statute speaks "is primarily, if not exclusively, a denial of such rights, or an inability to enforce them, resulting from the Constitution or laws of the State, rather than a denial first made manifest at the trial of the case". *Virginia* v. *Rives, supra,* 100 U. S. at 319.

It may well be argued that subsequent cases have put too narrow a construction upon *Rives.* The Fifth Circuit has noted, without approval or disapproval, that it may be argued today that the Supreme Court would recognize the right of removal under Section 1443(1) even where no legislative denial of rights is shown. *Rachel* v. *State of Georgia,* 342 F. 2d 336 at 339 (5th Cir. 1965). It would be presumptuous for a district court to anticipate such an interpretation of Section 1443(1) by the Supreme Court. The Court of

Appeals for the Fifth Circuit in *Rachel* also declined the invitation to do so.

The pertinent election laws of North Carolina, allegedly violated by Dr. Hawkins, are facially constitutional. Interference with an election registrar or usurpation of the authority of such a registrar is clearly the kind of conduct which may be made punishable by a state. Section 1443(1) has not yet been expanded beyond the narrow confines of *Powers* v. *Rives, supra.* There is no federal jurisdiction under 28 U. S. C. A. Section 1443(1).

Petitioner next contends that, in any event, jurisdiction is conferred upon this court under subsection (2) of 28 U. S. C. A. Section 1443 for the reason that Dr. Hawkins acted under "color of authority" to peacefully assist in registering qualified persons to vote, and to extend suffrage, under 42 U. S. C. A. Section 1971.

It is not altogether clear that Dr. Hawkins is one of those persons *who* may act "under color of authority". Quite possibly 28 U. S. C. A. Section 1443(2) may be availed of only by persons who are government officers or persons acting on their behalf or at their instance. See *Board of Education of City of New York* v. *Citywide Committee for Integration,* 342 F. 2d 284 at 285 (2d Cir. 1965).

But, assuming, without deciding, that Dr. Hawkins is one of those persons who may come within the statute, it is quite clear, in my opinion, that he did not act under "color of authority" within the meaning of subsection (2) of Section 1443. Nothing in any federal statute called to my attention, nor in the Federal Constitution, directs or authorizes Dr. Hawkins to act as a North Carolina election registrar, or to interfere with a duly-authorized registrar, or to usurp the functions of such a registrar. However

worthy his motives and activity may have been with respect to his legitimate desire to further suffrage, the laws and constitutional provisions relating to the right to vote are permissive rather than mandatory, and required of Dr. Hawkins no action. Dr. Hawkins fails to point to any federal law providing for equal rights or the right to vote which gives him authority or direction to act in the way and manner alleged by the State in its indictments.

"When the removal statute speaks of 'color of authority derived from' a law providing for equal rights, it refers to a situation where the lawmakers manifested an affirmative intention that a beneficiary of such a law should be able to do something and not merely to one where he may have a valid defense or be entitled to have civil or criminal liability imposed on those interfering with him." *People of the State of New York* v. *Galamison,* 342 F. 2d 255 at 271 (2d Cir. 1965).

The construction of Section 1443(2) urged by Dr. Hawkins would be a startling innovation having immeasurable impact on federal jurisdiction. That the statute is nearly one hundred years old and has never been so construed is some indication of the novelty of the theory now advanced.

Since there is no jurisdiction, Dr. Hawkins' motion to dismiss the indictment is not reached.

The motion to remand will be allowed and an appropriate order will be entered in accordance with this Memorandum of Decision.

This 15th day of May, 1965.

J. B. CRAVEN, JR.
J. Braxton Craven, Jr., Chief Judge
Chief Judge
United States District Court for the
Western District of North Carolina

Judgment of United States District Court for the Western District of North Carolina

ORDER OF REMAND

For the reasons stated in a Memorandum of Decision filed simultaneously, IT IS ADJUDGED that these cases (designated in this court as Cr. No. 1943) were removed improvidently, and without jurisdiction, and it is accordingly ordered that the cases be, and they hereby are, remanded to the Superior Court of Mecklenburg County.

A certified copy of the Order of Remand shall be mailed by the Clerk of this court to the Clerk of the Superior Court of Mecklenburg County.

This 15th day of May, 1965.

J. B. CRAVEN, JR.,
J. Braxton Craven, Jr., Chief Judge
United States District Court for the
Western District of North Carolina

LIBRARY

Office-Supreme Court, U.S.
FILED
OCT 13 1966
JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1966

No. 558

REGINALD A. HAWKINS,
Petitioner,

—vs—

STATE OF NORTH CAROLINA,
Respondent.

BRIEF OF THE STATE OF NORTH CAROLINA OPPOSING PETITION FOR WRIT OF CERTIORARI

T. WADE BRUTON
Attorney General of North Carolina
Justice Building
Raleigh, North Carolina

THEODORE C. BROWN, JR.
Staff Attorney
Justice Building
Raleigh, North Carolina

INDEX

Statement of the Case 1

Question Involved 2

Facts 2

Summary of Argument 3

Argument 3

DID THE COURT OF APPEALS ERR IN AFFIRMING THE DISTRICT COURT'S ORDER OF REMAND? 2

Conclusion 10

Appendix:

1. North Carolina General Statute 163-196, (4), (3), ... A1
2. North Carolina General Statute 163-197, (1), (4), (7), (13). A1
3. U. S. District Court—ORDER OF REMAND A2
4. U. S. District Court—MEMO OF DECISION A3
5. Bill of Indictment No. 42-238 ..... A7
6. Bill of Indictment No. 42-237 ..... A7

TABLE OF CASES

City of Greenwood vs. Peacock, 384 U. S. 808, (1966) 7

Hawkins vs. North Carolina __ F. 2d __, (1966) 2

New York vs. Galamison, 342 F. 2d. 255, (1955), cert. dnd. 380 U. S. 977, (1965) 7

STATUTES INVOLVED

General Statutes of North Carolina, Chapter 163:

Section 163-169, (3), (4), ... 1

Section 163-197, (1), (4), (7), (13) 1

42 U.S.C.A.:

Section 1971, (b) 3

Section 1981 3

Section 1983 3

Section 1985 3

Section 2000 (a)-(2), A-(a) 3

28 U. S. C. A.:
Section (1), (2) ---- 1
United States Constitution:
Amendment 1, ---- 3
Amendment 14, ---- 3
Amendment 15, ---- 3

Supreme Court of the United States

October Term, 1966

No. 558

REGINALD A. HAWKINS,

Petitioner,

—vs—

STATE OF NORTH CAROLINA,

Respondent.

BRIEF OF THE STATE OF NORTH CAROLINA OPPOSING PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

The Petitioner, Reginald A. Hawkins, was indicted by the Grand Jury of Mecklenburg County in Charlotte, North Carolina, at the September-October 1964 Term. The indictments in Case No. 42-237 and Case No. 42-238 charge Hawkins with the violation of N. C. G. S. 163-196, (3), (4) and N. C. G. S. 163-197, (1), (4), (7), and (13). (See Respondent's Appendix p. A1). Hawkins, through counsel, moved to quash the indictments in the State Court, at the November 1964 Term of the Superior Court. His motion was denied on November 10, 1964, and he did not appeal therefrom to the Supreme Court of North Carolina.

On November 12, 1964, Hawkins filed in the United States District Court for the Western District of North Carolina, a Removal Petition, asserting that his State case should be removed pursuant to 28 U. S. C. A., Section 1443, (1), (2). The State filed motion that the cases be remanded, and a plenary hearing was had on May 12, 1965, and a Memorandum De-

cision, along with an Order of Remand, was entered on May 15, 1965 by the District Court. (Respondent's Appendix p. A2). From that judgment, Hawkins appealed to the Fourth Circuit Court of Appeals.

Case No. 10,062, HAWKINS vs. NORTH CAROLINA, was heard on April 7, 1966, and subsequently supplemental briefs were filed and on August 16, 1966, the Court of Appeals for the Fourth Circuit handed down its decision affirming the District Court's Order of Remand. (See Petitioner's Appendix I, p.1(a). HAWKINS vs. NORTH CAROLINA, -- F. 2d. --, (1966).)

From the Court of Appeals for the Fourth Circuit's Judgment, Hawkins seeks further review in the Supreme Court of the United States by an application for the issuance of the Writ of Certiorari.

QUESTION INVOLVED

DID THE COURT OF APPEALS ERR IN AFFIRMING THE DISTRICT COURT'S ORDER OF REMAND?

FACTS

Reginald A. Hawkins, a Negro Dentist in Charlotte, North Carolina, was on the night of April 8, 1964 present in the gym of the Second Ward High School in the City of Charlotte, North Carolina, where potential voters were being registered by the duly authorized Registrar of Precinct No. 2. The Mecklenburg County Board of Elections had appointed a Registrar, Mrs. H. M. Houston, a Negro, to go to the all Negro Precinct No. 2 on April 8, 1964 and there to examine, and qualify, and give oaths for registering potential voters for the May 1964 primary elections. (See Petitioner's Court of Appeal Appendix, p. 21-(a)).

On this night, Hawkins came to the gym and proceeded to wave a letter before Mrs. Houston, the Registrar, which Hawkins said authorized *him* to administer the oaths and

etc. to the prospective voters, and he proceeded to administer oaths, and register voters. These facts are what prompted the numerous Negro citizens (listed on the bills of indictment), who witnessed Hawkins' actions on the night of April 8, 1964, to testify to same before the Grand Jury of Mecklenburg County, and which Grand Jury returned true bills of indictment charging the Petitioner Hawkins with criminal violations of North Carolina voting laws. (N. C. G. S. 163-196-(3), (4), 197-(1), (4), (7), (13). See Respondent's Appendix, p. A7, 8).

SUMMARY OF ARGUMENT

In this Brief in opposition to the granting of the Petition for Writ of Certiorari, the State of North Carolina summarizes its argument as follows:

That, the Fourth Circuit Court of Appeals was legally correct in affirming the District Court's Order of Remand in this case, and same should be affirmed by this Court.

ARGUMENT

In the instant case, the Petitioner seeking a review of the Fourth Circuit Court of Appeals' opinion, brings forward his Petition which is found in the Appendix to the Brief of the Petitioner-Appellant, and on pages 24-A and 25-A therein, in the Petition for Removal, which was filed in the Federal District Court, Hawkins contended that his *"acts"* were constitutionally protected. (See Appellant's Court of Appeals Appendix, pp. 24-A and 25-A, Petition for Removal.). In paragraphs 9, 10, and 11, and under the prayer contained in the Petition for Removal, Hawkins alleged and contended that the "acts" which he performed on the night in question were "acts" protected by the Constitution of the United States and by 42 U. S. C. A., Section 1981; 42 U. S. C. A., Section 1983; 42 U. S. C. A., Section 1985; 42 U. S. C. A., Section 1971; United States Constitution Amendments 1, 14, and 15.

As a result of the opinion filed by the Fourth Circuit Court

of Appeals, which appears in the Appellant-Petitioner's Appendix (See Appellant's Appendix I, p. 1-(a)), the Petitioner Hawkins now seeks as a result of the special concurring opinion, that Sections 1971-(b) of 42 U. S. C. A., and also Sections 2000-(a)-2 and 20000-A-(a) apply to his situation. In examining the judgment of the Court of Appeals, and the Petition for Removal filed in the District Court, it is plain to see that the Petitioner has *abandoned* all of his allegations under the Petition for Removal, which he *originally* asserted in the District Court, and brought on appeal to the Fourth Circuit, and has now, in this Court, endeavored to embark upon a *new course* under the dicta which Judge Sobeloff proffered in his special concurring opinion. Whatever the case may be, the State of North Carolina resists *any and all* of these contentions and allegations and specifically argues that the indictments which Charged Dr. Hawkins with violations of North Carolina Voting Laws are constitutional and valid and is a case which should be tried in the Criminal Courts of North Carolina, and does not in any way nor interpretation come under any Federal laws as cited by the Petitioner.

The factual situation in this case, in paragraph 3, (found on page 20-A of the Petition for Removal, in the Appellant's Appendix to the Fourth Circuit), is set out in complete agreement except for two words which were used by the Petitioner to clarify or define his *"acts"* by the board and general terms of "assisted" and "suggested".

The Respondent points out that the evidence the State will show at a trial of Hawkins in the State Court, on the present bills of indictment, will reflect a different interpretation of the words, "assisted", and "suggested", which the Petitioner uses in his Petition for Removal. In fact, the Negro witnesses, including the Registrar, Mrs. Houston, all of whom were present and witnessed the acts of Dr. Hawkins on the night of April 8, 1964, it is submitted, will give a directly opposite definition to the words of "assisted" and "suggested", which Petitioner uses in his Petition. The State must then, by this evidence, show beyond a shadow of doubt the guilt of Hawkins or he will go free.

The indictments in this case, which are reproduced in the Appendix filed by the Petitioner, fail to reflect the *backside* of the indictments, which shows the names of the negro witnesses who testified before the Mecklenburg County Grand Jury and which testimony will be used upon trial of Hawkins in the Superior Court, if the State of North Carolina is allowed to retry Hawkins as has been ordered by the District Court. The backside of the indictments reflect the witnesses and are found in the Respondent's Appendix, p. A7, 8.

At the Hearing on whether or not to remand in the District Court, Petitioner Hawkins failed to in any way present any evidence or testimony, witnesses, or any factual difference from what was argued by the State as to his "assistance" of the Negro Registrar, and whether or not he "assisted" or "helped" the Registrar or whether he actually took over her duties as the State contended and performed all of her duties for her on the particular night without this authority being ordered by the Mecklenburg County Board of Elections. It is the State's contention that Dr. Hawkins proceeded to the Second Ward gymnasium on the night of April 8, 1964 and did *usurp, take over, commandeer,* and completely run the registration, the giving of oaths, the administering of examinations of various prospective voters, and did violate North Carolina General Statutes which are specifically enumerated hereinafter. (See Respondent's Appendix, p. A1, 2).

The State of North Carolina, through its duly elected Solicitor of the Mecklenburg County Superior Court, in no way is attempting to intimidate, threaten or coerce Dr. Hawkins, or attempt to intimidate, threaten, or coerce *ANY* person in this case, who is seeking to help persons to vote or urging or aiding any person to vote or attempt to vote, by seeking a criminal indictment against him for his acts on the night of April 8, 1964.

Close examination of all of the facts in the case clearly reflect that in no way has Dr. Hawkins been abridged, denied, or punished, or attempted to be punished, as a result

of his Membership in the Voter Registration Group which was seeking many more names on the registration rolls in Mecklenburg County in April of 1964. In fact, Dr. Hawkins was out of his precinct and over in another precinct and evidently had secured a large number of persons at the Second Ward gym who were being registered or who were being examined in order that they might vote. It is particularly pointed out by the Respondent, that Dr. Hawkins was not denied the right to talk or to urge prospective voters to register, but, whether or not he was requested to "assist" the Registrar is a fact which shall be *greatly* enlarged upon at a trial in the State Court. It is also a significant fact that Dr. Hawkins was allowed to perform his urging of free assembly, and was allowed to urge his fellow negro citizens to register and participate in the upcoming primary election. In fact, it is unquestioned that Hawkins proceeded to take over the meeting in Ward 2 in the gym in Mecklenburg County on April 8, 1964, and run the election primary registration as he saw fit, and actually usurped and took over the Registrar's duties and obligations and performed her tasks for her *without* her assent or *without* any official authority from the Board of Elections.

Hawkins attempts herein to have the Federal Courts order, adjudge and decree that, under the broad interpretation of the Civil Rights Act of 1964, under *any* section there applicable, same would federally allow him to proceed to do these "acts". If these "acts" are allowed to be, utter chaos and confusion will of course befall all future elections as there are many people who have the same desire as Dr. Hawkins had on April 8, 1964, and they would seek to do the same, however, they have been curtailed in doing so for the reason that North Carolina laws provide that there is punishment for usurping the duties of an appointed registrar in an election.

Hawkins has failed to in any way show that he was acting under "color of authority" derived from the Mecklenburg County Board of Elections. In fact, his "color of authority" derived from his misrepresentations to the sincere Negro

prospective voters who were in the gym and who were attending the registration meeting in Ward 2 on April 8, 1964 by the fact that he waved about in the gym a letter which he alleged gave him authority to give oaths en masse to all of the persons present in the Gym. Hawkins, through his Petition, denies these facts, and alleges that he was "requested" to "assist" the Registrar and that he "suggested" that an en masse oath would be of great assistance in arriving at an expeditious registration of those persons who were in the gym. Whatever the facts may be, the matter should be aired in the State Courts and the Order of Remand should be upheld and affirmed.

It is respectfully submitted that in the case of NEW YORK vs. GALAMISON, 342 F. 2d 255, (1965); Cert. dnd. 380 U. S. 977, (1965), Judge Friendly, went into a great learned explantion of the history of 28 U.S.C. Section 1443, and subsections 1 and 2 therein. In this case, Judge Friendly affirmed the remand of Civil Rights cases back to the State Courts in New York for trial. In that case, which happened in New York, Civil Rights demonstrators, who had attempted various demonstrations throughout the City of New York, including the attempted blocking of highways to the New York State Fair, were being tried in the State Courts, and the same argument which is proffered in the original Petition for Removal filed in the instant case in behalf of Hawkins, was proffered by the appellant in the GALAMISON case. The District Court ordered a remand and the Circuit Court affirmed. Upon the same contentions, Hawkins seeks redress in this Court. However, it is pointed out that Hawkins did not participate in a demonstration or in acts of blocking highways, nor was he denied access to a public place or to public accommodations or a right to demonstrate or to vote or to urge others to vote. Hawkins usurped and took over without proper authority the Registrars' duties and functions at an election precinct meeting in violation of State law. In a recent case from the Supreme Court of the United States, CITY OF GREENWOOD vs. PEACOCK, 384 U. S. 808, (1966), this Court held:

"The individual petitioners contend, quite apart from

28 U.S.C.A., Section 1443 (1), they are entitled to move their cases to the District Court under 28 U.S.C.A., Section 1443 (2), which authorizes the removal of a civil action or criminal prosecution for 'any act under color of authority derived from any law providing for equal rights . . . .' The core of their contention is that the various Federal Constitution and statutory provisions invoked in their removal petitions conferred 'color of authority' upon them to perform the acts for which they were being prosecuted by the State. We reject this argument, because we have concluded that the history of Section 1443, (2), demonstrates convincingly that this sub-section of the Removal Statute is available only to the Federal Officers and to persons assisting such officers in the performance of their official duties."

In view of the above determination of Section 1443, (1), it is submitted that Hawkins in no way alleges or contends that he is a Federal Officer which would qualify him for removal under this Section.

Also, in CITY OF GREENWOOD, vs. PEACOCK, *supra*, this Court said:

". . . , we hold that the second sub-section of Section 1443 confers a privilege of removal only upon Federal Officers orAgents and those authorized to act with or for them in affirmatively executing duties under Federal law providing for equal civil rights."

As a result of the opinion handed down by the Fourth Circuit Court of Appeals in the Present Petition before this Court, the Petitioner NOW seeks to come under *new* subsections of 42 U.S.C.A. of the Civil Rights Act of 1964. It is significant to point out by the Respondent that these matters have been *fully* answered by this Court in CITY OF GREENWOOD vs. PEACOCK, *supra*, wherein the Court in its opinion said:

"The fundamental claim in this case, then, is that a case

for removal is made under Section 1443 (1) upon a petition alleging: (1) that the defendants were arrested by State Officers and charged with various offenses under State Law because they were negroes or because they were engaged in helping negroes assert their rights under federal equal civil rights laws, and that they are completely innocent of the charges against them, or (2) that the defendants will be unable to obtain a fair trial in the state court. The basic difference between this case and RACHEL, is thus immediately apparent. In RACHEL the defendants relied on the specific provisions of a Federal pre-emptive civil rights law, Section 201 (a) and 201 (c), of the Civil Rights Act of 1964, 42 USC, Section 2000-A, (a), and 2000-A-2 (c), (1964 edition), as construed in HAMM vs. CITY OF ROCK-HILL, *supra,* that under the conditions alleged, gave them: (1) The Federal statutory right to remain on the property of a restaurant proprietor after being ordered to leave, despite a State law making it a criminal offense not to leave, and, (2) the further Federal statutory right that no State should even attempt to prosecute them for their conduct. The Civil Rights Act of 1964, as construed in HAMM, thus specifically and uniquely conferred upon the defendants an absolute right to 'violate' the explicit terms of the State criminal trespass law impunity under the conditions alleged in RACHEL removal petition, and any attempt by the State to make them answer in a court for this conceited violation would directly deny their federal right in 'the courts of the state'. The present case differs from RACHEL in two significant respects, first, no federal law confers an absolute right on private citizens, on civil rights advocates, or on Negroes, or on anybody else to obstruct a public street, to contribute to the delinquency of a minor, to drive an automible without a license, or to bite a policeman. (2). No federal law confers immunity from state prosecution on such charges."

Based upon the above law stated in the PEACOCK Case and in the GALAMISON Case, it is submitted by the Respon-

dent herein that no federal law under the Civil Rights Act or any other federal statute authorizes or empowers Dr. Hawkins to arbitraily and upon his volition to enter into a precinct meeting where prospective voters are being registered and given oaths and take over the meeting and administer the oaths to the prospective voters, in violation to State law.

CONCLUSION

In conclusion in this brief in opposition to the application for the issuance of Certiorari sought in behalf of the Petitioner, Reginald Hawkins, the Respondent submits that the Petitioner has failed to qualify himself under any Federal Law or Statute which would entitle him to the removal of this case, which is purely and simply a criminal cause against an alleged criminal defendant in the State Criminal Courts of North Carolina. It is therefore contended that this Court should affirm the Fourth Circuit Court of Appeals Order affirming the District Court's Order of Remand and allow the State of North Carolina, the Respondent herein, to proceed to trial in this cause.

Respectfully submitted,

THOMAS WADE BRUTON
Attorney General

Theodore C. Brown, Jr.
Staff Attorney

Respondent's Appendix

§ 163-196. Certain acts declared misdemeanors.—Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this section to be unlawful, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. It shall be unlawful:

(4) For any person to be guilty of any boisterous conduct so as to disturb any member of any election or any registrar or judge of elections in the performance of his duties as imposed by law;

(3) For any person to break up or by force or violence to stay or interfere with the holding of any primary or election, to interfere with the possession of any ballot box, election book, ticket or return sheet by those entitled to possession of the same under the law, or to interfere in any manner with the performance of any duty imposed by law upon any election officer or member of any board of elections;

§ 163-197. Certain acts declared felonies.—Any person who shall, in connection with any primary, general or special election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a felony and upon conviction shall be imprisoned in the State's prison not less than four months or fined not less than one thousand dollars, or both, in the discretion of the court. It shall be unlawful:

(1) For any person fraudulently to cause his name to be placed upon the registration books of more than one election precinct or fraudulently to cause or procure his name or that of any other person to be placed upon the registration books in any precinct when such registration in that precinct does not qualify such person to vote legally therein, or to impersonate falsely

another registered voter for the purpose of voting in the stead of such other voter;

(4) For any person knowingly to swear falsely with respect to any matter pertaining to any primary or election;

(7) For any person with intent to commit a fraud to register or vote at more than one box or more than one time, or to induce another to do so, in the same primary or election, or to vote illegally at any primary or election;

(13) For any person falsely to make or present any certificate or other paper to qualify any person fraudulently as an elector, or to attempt thereby to secure to any person the privilege of voting.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CR. NO. 1943

STATE OF NORTH CAROLINA,
Respondent,
V.
REGINALD A. HAWKINS,
Defendant-Petitioner.

ORDER OF REMAND

For the reasons stated in a Memorandum of Decision filed simultaneously, IT IS ADJUDGED that these cases (designated in this court as Cr. No. 1943) were removed improvidently, and without jurisdiction, and it is accordingly ordered that the cases be, and they hereby are, remanded to the Superior Court of Mecklenburg County.

A certified copy of the Order of Remand shall be mailed

by the Clerk of this court to the Clerk of the Superior Court of Mecklenburg County.

This 15th day of May, 1965.

J. BRAXTON CRAVEN, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CR. NO. 1943

STATE OF NORTH CAROLINA,
Respondent,
V.
REGINALD A. HAWKINS,
Defendant-Petitioner.

MEMORANDUM OF DECISION

At its September-October term, 1964, the Grand Jury of Mecklenburg County returned indictments against Dr. Reginald A. Hawkins charging, without reference to any particular statute, violations of the election laws of North Carolina. On November 12, 1964, Dr. Hawkins removed these cases (in this court given the single number 1943) from the Superior Court of Mecklenburg County to this court pursuant to 28 U.S.C.A. Sections 1443 and 1446. The cases were set for trial before the undersigned district judge and a jury for April 26, 1965. On that day, and for the first time, the Solicitor for the State moved the court to remand the cases to the Superior Court of Mecklenburg County, questioning federal jurisdiction. The trial of the cases was thereupon postponed and the question of jurisdiction was set down for argument and heard on May 12, 1965.

The court has been helped tremendously by an excellent historical brief filed by counsel for Dr. Hawkins.

It is conceded that there is no federal jurisdiction to try these criminal cases arising upon indictments in the state court unless it be under 28 U.S.C.A. Section 1443, which reads as follows:

"Section 1443. *Civil rights cases*

"Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

"(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

"(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law."

Since *Virginia v. Rives,* 100 U.S. 313 (1880), and *Kentucky v. Powers,* 201 U.S. 1 (1906), it has been well settled that removal under present Section 1443(1) was allowable only on a claim of *facial* unconstitutionality of a statute or constitutional provision. In *Rives* the Court said that the inability to enforce federal rights of which the removal statute speaks "is primarily, if not exclusively, a denial of such rights, or an inability to enforce them, resulting from the Constitution or laws of the State, rather than a denial first made manifest at the trial of the case." *Virginia v. Rives, supra,* 100 U.S. at 319.

It may well be argued that subsequent cases have put too narrow a construction upon *Rives.* The Fifth Circuit has noted, without approval or disapproval, that it may be argued today that the Supreme Court would recognize the right of

removal under Section 1443(1) even where no legislative denial of rights is shown. *Rachel v. State of Georgia*, 342 F. 2d 336 at 339 (5th cir. 1965). It would be presumptuous for a district court to anticipate such an interpretation of Section 1443(1) by the Supreme Court. The Court of Appeals for the Fifth Circuit in *Rachel* also declined the invitation to do so.

The pertinent election laws of North Carolina, allegedly violated by Dr. Hawkins, are facially constitutional. Interference with an election registrar or usurpation of the authority of such a registrar is clearly the kind of conduct which may be made punishable by a state. Section 1443(1) has not yet been expanded beyond the narrow confines of *Powers* and *Rives*, supra. There is no federal jurisdiction under 28 U.S.C.A. Section 1443(1).

Petitioner next contends that, in any event, jurisdiction is conferred upon this court under subsection (2) of 28 U.S.C.A. Section 1443 for the reason that Dr. Hawkins acted under "color of authority" to peacefully assist in registering qualified persons to vote, and to extend suffrage, under 42 U.S.C.A. Section 1971.

It is not altogether clear that Dr. Hawkins is one of those persons *who* may act "under color of authority." Quite possibly 28 U.S.C.A. Section 1443(2) may be availed of only by persons who are government officers or persons acting on their behalf or at their instance. See *Board of Education of City of New York v. Citywide Committee for Integration*, 342 F. 2d 284 at 285 (2d Cir. 1965).

But, assuming, without deciding, that Dr. Hawkins is one of those persons who may come within the statute, it is quite clear, in my opinion, that he did not act under "color of authority" within the meaning of subsection (2) of Section 1443. Nothing in any federal statute called to my attention, nor in the Federal Constitution, directs or authorizes Dr. Hawkins to act as a North Carolina election registrar, or to interfere with a duly-authorized registrar, or to usurp the

functions of such a registrar. However worthy his motives and activity may have been with respect to his legitimate desire to further suffrage, the laws and constitutional provisions relating to the right to vote are permissive rather than mandatory, and required of Dr. Hawkins no action. Dr. Hawkins fails to point to any federal law providing for equal rights or the right to vote which gives him authority or direction to act in the way and manner alleged by the State in its indictments.

"When the removal statute speaks of 'color of authority derived from' a law providing for equal rights, it refers to a situation where the lawmakers manifested an affirmative intention that a beneficiary of such a law should be able to do something and not merely to one where he may have a valid defense or be entitled to have civil or criminal liability imposed on those interfering with him." *People of the State of New York v. Galamison*, 342 F. 2d 255 at 271 (2d Cir. 1965).

The construction of Section 1443(2) urged by Dr. Hawkins would be a startling innovation having immeasurable impact on federal jurisdiction. That the statute is nearly one hundred years old and has never been so construed is some indication of the novelty of the theory now advanced.

Since there is no jurisdiction, Dr. Hawkins' motion to dismiss the indictments is not reached.

The motion to remand will be allowed and an appropriate order will be entered in accordance with this Memorandum of Decision.

This 15th day of May, 1965.

J. BRAXTON CRAVEN, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA

No. 42-238
STATE
VS.

REGINALD A. HAWKINS
VIOLATION OF ELECTION LAWS

_____Pros.

WITNESSES:

xRev. A. J. Ryans—731 E. Trade St.
xJ. B. Barrett—S.B.I.
xH. T. Hartley—S.B.I.
xMrs. W. Warren Gluck—1931 Chatham Ave.
Mrs. Orris Carpenter
William Little—929 E. 3rd St.
xMartha Gibson—805 E. Vance St.
xGeorge Little—925 E. Third St.
xMaggie Foster—327 S. Torrence St.

Those marked x sworn by the undersigned Foreman and examined before the Grand Jury and this Bill found V a True Bill.

John C. Knox
Foreman Grand Jury

No. 42-237
STATE
VS.
REGINALD A. HAWKINS
INDICTMENT
VIOLATION OF ELECTION LAWS

_____Pros.

WITNESSES:

xRev. A. J. Ryans—731 E. Trade St.
xJ. B. Barrett—S.B.I.
xH. T. Hartley—S.B.I.
xMrs. W. Warren Gluck—1931 Chatham Ave.

Mrs. Orris Carpenter
William Little—929 E. 3rd St.
xMartha Gibson—805 E. Vance St.
xGeorge Little—925 E. 3rd St.

xMaggie Foster—327 S. Torrence St.

Those marked x sworn by the undersigned Foreman and examined before the Grand Jury and this bill found V a True Bill.

John C. Knox
Foreman Grand Jury

Office-Supreme Court, U.S.
FILED
OCT 20 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 558

REGINALD A. HAWKINS,

Petitioner,

—v.—

STATE OF NORTH CAROLINA,

Respondent.

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JACK GREENBERG
MELVYN ZARR
10 Columbus Circle
New York, New York 10019

ANTHONY G. AMSTERDAM
3400 Chestnut Street
Philadelphia, Pennsylvania 19104

J. LEVONNE CHAMBERS
405½ East Trade Street
Charlotte, North Carolina

THOMAS WYCHE
2500 Beatties Ford Road
Charlotte, North Carolina

CHARLES V. BELL
112 South Irwin Avenue
Charlotte, North Carolina

Attorneys for Petitioner

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 558

REGINALD A. HAWKINS,

Petitioner,

—v.—

STATE OF NORTH CAROLINA,

Respondent.

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

In its brief in opposition to certiorari, respondent recites at length its version of the facts of this case (respondent's brief, pp. 2-7). Petitioner concedes that he has no right to removal of his prosecution to federal court pursuant to 28 U. S. C. §1443(1) if the facts as stated therein are true. However, respondent's version of the facts finds no support in the record. Central to this case is the fact that petitioner has never been afforded an opportunity to prove in a federal evidentiary hearing the truth of the allegations in his petition for removal. Respondent's assertions to the contrary (respondent's brief, pp. 1, 5) are flatly untrue. See opinion of the district court (appendix to certiorari petition, p. 10a; appendix to respondent's brief, p. A-3: "[T]he

question of jurisdiction was set down for *argument* and heard on May 12, 1965" (emphasis added)).

Respectfully submitted,

JACK GREENBERG
MELVYN ZARR
10 Columbus Circle
New York, New York 10019

ANTHONY G. AMSTERDAM
3400 Chestnut Street
Philadelphia, Pennsylvania 19104

J. LEVONNE CHAMBERS
405½ East Trade Street
Charlotte, North Carolina

THOMAS WYCHE
2500 Beatties Ford Road
Charlotte, North Carolina

CHARLES V. BELL
112 South Irwin Avenue
Charlotte, North Carolina

Attorneys for Petitioner